IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA ex rel. ARNOLD SHOWELL, Plaintiff,	CIVIL ACTION
v.	NO. 98-1916
PHILADELPHIA AFL, CIO HOSPITAL ASSOCIATION a/k/a JFK MEMORIAL HOSPITAL, a/k/a JOHN F. KENNEDY HEALTH CENTER and JAVAD ABDOLLIAHIAN, M.D., Defendants.	

MEMORANDUM

R.F. KELLY, J. APRIL 18, 2000

Plaintiff Arnold Showell ("Plaintiff") brings this action pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. sections 3729 - 3733 ("FCA"), in connection with the Defendants' Medicare billings for the treatment of Plaintiff's mother, Frances Ellis ("Ms. Ellis"), now deceased. Presently before this Court is Plaintiff's Motion for Summary Judgment, as well as Cross-Motions for Summary Judgment filed by: (1) Philadelphia AFL, CIO Hospital Association, and John F. Kennedy Memorial Hospital (collectively "J.F.K."), and (2) Javad Abdolliahian, M.D. ("Dr. Abdolliahian")[1]. For the reasons that

[1] The spelling of Dr. Abdolliahian's name is not consistent among the documents before this Court, including within his own Motion. We will assume the correct spelling of his name is that which is contained in the title of his Motion, which is

follow, Plaintiff's Motion is denied and the Motions of J.F.K. and Dr. Abdolliahian are granted.

I. STANDARD OF REVIEW FOR SUMMARY JUDGMENT.

"Summary judgment is appropriate when, after considering the evidence in the light most favorable to the nonmoving party, no genuine issue of material fact remains in dispute and `the moving party is entitled to judgment as a matter of law.'" Hines v. Consolidated Rail Corp., 926 F.2d 262, 267 (3d Cir. 1991) (citations omitted). "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). The moving party carries the initial burden of demonstrating the absence of any genuine issues of material fact.[2] Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1362 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Once the moving party has produced evidence in support of summary judgment, the nonmovant must go beyond the allegations set forth in its pleadings and counter with evidence

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Abdolliahian.

[2] "A fact is material if it could affect the outcome of the suit after applying the substantive law. Further, a dispute over a material fact must be 'genuine,' i.e., the evidence must be such 'that a reasonable jury could return a verdict in favor of the non-moving party.'" Compton v. Nat'l League of Professional Baseball Clubs, 995 F. Supp. 554, 561 n.14 (E.D. Pa.) (citations omitted), aff'd, 172 F.3d 40 (3d Cir. 1998).

that demonstrates there is a genuine issue of fact for trial. Id. at 1362-63. Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). "Unsubstantiated and subjective beliefs and opinions are not competent summary judgment evidence." Forsyth v. Barr, 19 F.3d 1527, 1533 (5th Cir.), cert. denied, 513 U.S. 871 (1994). Further, "when there are cross-motions, each motion must be considered separately, and each side must still establish a lack of genuine issues of material fact and that it is entitled to judgment as a matter of law." Nolen v. Paul Revere Life Ins. Co., 32 F. Supp.2d 211, 213 (E.D. Pa. 1998).

II. DISCUSSION.

A. FALSE CLAIMS ACT.

The FCA provides for civil and criminal penalties for persons who knowingly submit false claims to the government. United States ex rel. Dunleavy v. County of Delaware, 123 F.3d 734, 738 (3d Cir. 1997). The qui tam[3] provisions of the FCA "permit[], in certain circumstances, suits by private parties on

[3] "Qui tam" is an abbreviation for the Latin phrase, qui tam pro domino rege quam pro se ipso in hac parte sequitur, which means "who brings the action for the King as well as himself." Black's Law Dictionary 1251 (6th Ed. 1990).

behalf of the United States against anyone submitting a false claim to the Government." United States ex rel. Mistick PBT v. Housing Authority of the City of Pittsburgh, 186 F.3d 376, 382 (3d Cir. 1999)(quoting Hughes Aircraft Co. v. United States ex rel. Schumer, 520 U.S. 939, 941 (1997)). A private person, known as the relator, with knowledge of fraud being committed against the government may institute litigation, acting as a de facto attorney-general, against the responsible parties. Dunleavy, 123 F.3d at 738. Under the FCA, "a qui tam plaintiff may win anywhere from 10% to 30% of the proceeds of the suit (including civil penalties and trebled damages), as well as reasonable expenses, attorney fees, and costs, depending on such factors as whether the qui tam plaintiff or the government prosecuted the suit and the significance to the suit of the qui tam plaintiff's information."[4] United States ex rel. Waris v. Staff Builders, Inc., No.Civ.A. 96-1969, 1999 WL 179745, at *1 (E.D.Pa. Mar. 4, 1999).

In the instant case, Plaintiff's mother, Ms. Ellis, treated with Dr. Abdolliahian at J.F.K. Hospital beginning in 1992 until approximately 1998. In connection with that treatment, Defendants submitted claims for payment to Medicare. Plaintiff does not allege that he was ever present when Ms. Ellis

[4] The United States declined to participate in this action. Accordingly, Plaintiff is proceeding pro se and in forma pauperis.

received any treatment from J.F.K. or Dr. Abdolliahian. Moreover, Plaintiff did not know what Ms. Ellis was being treated for, although he assumed she was being treated for high blood pressure. (Showell Dep. at 23.) Plaintiff did not know what treatments were being provided for Ms. Ellis. Id. at 21. Further, Ms. Ellis never complained to Plaintiff that she was dissatisfied with her medical treatment. Id. at 23-26. The only knowledge Plaintiff has of what occurred during Ms. Ellis' treatment at J.F.K. with Dr. Abdolliahian is what he has discerned from Ms. Ellis' medical records, which he obtained through a power of attorney. He asserts that these medical records are inconsistent with Medicare summary notices produced and mailed by Medicare to Ms. Ellis.[5]

In his fourteen-count, two hundred twenty-five paragraph Amended Complaint, Plaintiff asserts that J.F.K. and Dr. Abdolliahian presented false claims for payment to the United States government, created false records, and delivered services other than those for which they billed, in violation of the FCA.[6]

The pertinent provisions of section 3729 of the FCA are as follows

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[5] Apparently, some of these notices were produced by Blue Cross/Blue Shield; however, the majority were produced by Medicare.

[6] It must be noted that both Plaintiff's Amended Complaint and his Motion for Summary Judgment are quite lengthy and consist mostly of an incomprehensible stream of allegations.

(a) **Liability for Certain Acts**. - Any person who -

(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;

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(4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(b) **Knowing and knowingly defined**. -For purposes of this section, the terms “knowing” and “knowingly” mean that a person, with respect to information -

(1) has actual knowledge of the information;

(2) acts in deliberate ignorance of the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

31 U.S.C. § 3729 (a)(1),(2),(4); 31 U.S.C. § 3729(b).

The record in this case reveals that Plaintiff has undertaken minimal discovery in this case in his attempt to develop his claims under the above provisions. Moreover, Plaintiff’s summary judgment motion does not cite to the record, other than to his Amended Complaint. Rather, in support of his summary judgment motion, and in opposition to those of Defendants, Plaintiff relies predominantly on seven documents, medical records of Ms. Ellis, which he has attached to the

Amended Complaint.[7] Although he did not retain an expert to interpret these documents, he insists that they are false records in violation of the FCA, as he asserts that they are inconsistent with the various Medicare summary notices which were mailed to Ms. Ellis.

Document 1 is a J.F.K. Progress Note for Ms. Ellis with one entry made on September 9, 1997, and two entries made on September 23, 1997. The September 9, 1997 entry is blank, except for the date. The September 23, 1997 entries indicate that Ms. Ellis was given influenza vaccine and a prescription for Vasotec by, Plaintiff assumes, Linda Baylis, a nurse. (Showell Dep. at 54.) Plaintiff does not contend that his mother was not given an influenza vaccine on that date. Id. Moreover, Plaintiff contends that Ms. Baylis' only motive was to record that Ms. Ellis was given an influenza vaccine. Id. However, Plaintiff does contend that Document 1 is a false record because J.F.K. and Dr. Abdolliahian "submitted claims for hospital services and doctor services, office services, to Medicare that are not recorded" on the document. Id. at 55-56. Specifically, Plaintiff claims that although the document reflects that a prescription for Vasotec was administered on October 23, 1997, Plaintiff has other records, ostensibly the Medicare summary

[7] For the sake of clarity, we address the documents in the order in which they were addressed in Plaintiff's deposition, although not necessarily in the order in which they were attached to the Amended Complaint.

notices, which indicate that the prescription was given on October 17, 1997. Id. at 58. Further, Plaintiff claims that Dr. Abdolliahian submitted a claim for this service to Medicare on October 24, 1997. Id. at 57. Therefore, Plaintiff claims the document is a false record because the date is inaccurate.

Document 2 is a J.F.K. Progress Note for Ms. Ellis with the first entry dated November 20, 1997 which indicates that Ms. Ellis was given a prescription for Procardia on February 19, 1998. Id. at 63. Plaintiff asserts that the document is a false record because Dr. Abdolliahian wrote a prescription for Procardia for Ms. Ellis one week earlier, on February 12, 1998. Plaintiff claims that Dr. Abdolliahian submitted a claim for providing Procardia to Medicare on February 19, 1998. Id. Therefore, Plaintiff claims the record is false because it should have reflected the February 12, 1998 date, and that it was made to "support the claim that Dr. Abdolliahian submitted on 2/19/98." Id. He further asserts that the February 19, 1998 visit was "an excessive claim" because Dr. Abdolliahian "saw [Ms. Ellis] on February the 12th, 1998," and that he was basing that assertion on "a layman's opinion, going by the medical records." Id. at 180.

Document 3 is a J.F.K. Progress Note for Ms. Ellis containing, according to Plaintiff, an illegible first entry date, and two other entry dates on October 17, 1996. Plaintiff

believes that the information contained in Document 3 is either illegible, or he admits it is accurate. Id. at 63-65.

Document 4 is a J.F.K. Progress Note for Ms. Ellis in which the first entry is dated August 22, 1996.[8] The only part of Document 4 that Plaintiff asserts is inaccurate is the recording of Ms. Ellis' blood pressure as 210 over 100. Id. at 67. However, Plaintiff was not present during that visit, and has no reason to doubt the accuracy of the blood pressure reading other than that he has "never seen [his mother] with a blood pressure of 210, or anywhere near 210." Id.

Document 5 is a J.F.K. Triage Form dated April 5, 1996. Plaintiff believes that the information on Document 5 is either illegible, or he admits that it is accurate. Id. at 71.

Document 6 is another J.F.K. Triage Form, dated February 1, 1996. Plaintiff contends that the information on Document 6 is either illegible, or he admits it is accurate, with the exception of the fact that there is an "X" next to the line indicating temperature. Id. at 74. However, he maintains that the document is a false record.

Document 7 is a J.F.K. Progress Note for Ms. Ellis dated January 7, 1997. Plaintiff does not contest the accuracy of the information on Document 7, except to note that some of the entries were not signed. Id. at 80. However, he asserts the

[8] Plaintiff assumes the year of the entry date was 1996. (Showell Dep. at 66.)

document is a false record.

In support of his summary judgment motion and in opposition to the Defendants' cross summary judgment motions, Plaintiff also provides his own affidavit. However, the affidavit largely reiterates the allegations in the Amended Complaint. Plaintiff also provides correspondence in which he requested the medical records of his stepfather, Stacy Ellis, pursuant to a power of attorney. This correspondence is irrelevant in the instant case.[9]

Finally, Plaintiff also relies upon a health insurance claim form which he claims Dr. Abdolliahian submitted to Medicare on May 1, 1997. Although Plaintiff believes that Ms. Ellis saw Dr. Abdolliahian at J.F.K. on that date, he asserts that Dr. Abdolliahian billed Medicare for services that he did not provide on that date. Specifically, Plaintiff asserts that the claim form, which indicates that Dr. Abdolliahian performed services with a Medicare coding of 99214, is belied by Document 7, which indicates that Dr. Abdolliahian merely took Ms. Ellis' blood pressure and prescribed Vasotec on May 1, 1997. Id. at 86-88.

[9] Although he has not provided copies to this Court along with his motion or with the Amended Complaint, Plaintiff relies upon prescription forms signed by Dr. Abdolliahian, which he claims are false records merely because they are undated. (Showell Dep. at 94, 100, 101.) Further, Plaintiff claims that no records exist which would support the prescriptions. Id. at 101. However, Plaintiff's argument that the prescriptions are false records based merely on the absence of other records is unpersuasive. Moreover, Plaintiff does not assert the prescriptions were ever submitted to the government for payment.

Plaintiff claims that Dr. Abdolliahian, in providing services coded as 99214, should have provided "a history, an examination, and make a medical determination," according to Medicare "guidelines." Id. at 87. However, Plaintiff admits that he was not present during the doctor visit on May 1, 1997, and that he did not speak with Ms. Ellis regarding the visit. Id. at 88. Nor did he speak with Ms. Ellis' husband concerning the May 1, 1997 visit, who Plaintiff claims was present during the visit. Id. at 88-89. He further admits that he does not know what took place during that visit. Id. at 90. Finally, Plaintiff asserts that "the lack of medical records from 1992 to 1995 and parts of 1996 to '98" makes the claim false. Id. at 112. However, Plaintiff has no interest in knowing why there is a lack of records. Id.

Based upon the above, Plaintiff has not met his burden either as the party moving for summary judgment or as the party opposing, as he has failed to establish that either defendant violated sections 3729 (a)(1), (2), or (4) of the FCA. Rather, he bases his motion and his opposition to Defendants' motions upon unsubstantiated allegations and subjective opinions.

The elements of section 3729 (a)(1) are:(1) that the defendant presented or caused to be presented to an agent of the United States, a claim for payment; (2) that the claim was false or fraudulent; (3) that the defendant knew the claim was false or

fraudulent; and (4) that the United States suffered damages as a result. United States ex rel. Stinson, et al., v. Provident Life & Accident Ins. Co., 721 F. Supp. 1247, 1259 (S.D.Fla. 1989)(citations omitted). Section 3729 (a)(2) requires that: (1) the defendant made, used or caused to be made or used, a record or statement to get a claim against the United States paid or approved; (2) the record or statement and the claim were false or fraudulent; (3) the defendant knew that the record or statement and the claim were false or fraudulent; and (4) the United States suffered damages as a result. Id.

In the instant case, Plaintiff has failed to establish that the medical records or claims were false or fraudulent. The only basis for his argument that the records or claims were false is that they are inconsistent with his interpretation of the Medicare summary notices. However, Plaintiff admits that he does not know, with regard to any of the claims, how they were processed within the hospital, other than his assertion that they were signed by Dr. Abdolliahian. Id. at 138-139. He also does not know how J.F.K. monitors its records or billing. Id. at 107. Moreover, he does not know what services were provided for Ms. Ellis. Id. at 21. He merely insists that the medical records are inconsistent with what he imagines transpired during her visits with Dr. Abdolliahian.

Moreover, even assuming that the documents Plaintiff

relies upon are false, Plaintiff has failed to establish that either Defendant acted knowingly within the meaning of the statute, i.e., with actual knowledge, in deliberate ignorance of the truth or falsity of the information, or in reckless disregard of the truth or falsity of the information. See 31 U.S.C. § 3729 (b). As Defendants correctly point out, the only support for his contention that the Defendants acted knowingly is his own deposition testimony

> Q. All right. You've made the allegation that JFK has submitted numerous false claims to the government.
> A. Um-hum.
> Q. What evidence do you have that that was done knowingly?
> A. Give me a second.
> Q. Take your time.
> (Pause)
> A. J.F.K. double-billed Medicare – along with the system with Dr. Abdolliahian – double-billed Medicare. They triple-billed Medicare from 1992 to 1998.
>
> And J.F.K. benefitted from the fraud. Dr. Abdolliahian was on the staff of J.F.K. Hospital. Dr. Abdolliahian referred the claims for J.F.K. Hospital. J.F.K. Hospital did not monitor the claims, did not monitor the medical records, all in violation of the False Claim (sic) Act.
> Q. Anything else?
> A. That's it.
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> A. Aside from the fact that there were claims submitted for which you contend the records don't support the claims, do you have any evidence that anyone did anything knowingly?
> A. I just answered that question.

(Showell Dep. at 106-108.) Plaintiff also asserted in his deposition, without any support for the proposition, that Dr.

Abdolliahian "has a pattern of submitting false claims" for Medicare patients other than Ms. Ellis. Id. at 108.

However, Plaintiff has not established that any alleged inaccuracy on the medical records is due to more than mere mistake or negligence, which is not actionable under the FCA. Rather, in FCA cases,

> Innocent mistake is a defense to the criminal charge or civil complaint. So is mere negligence. The statutory definition of "knowingly" requires at least "deliberate ignorance" or "reckless disregard" . . .[w]hat constitutes the offense is not intent to deceive but knowing presentation of a claim that is either "fraudulent" or simply "false." The requisite intent is the knowing presentation of what is known to be false.

Wang v. FMC Corp., 975 F.2d 1412 (9th Cir. 1992) (quoting United States ex rel. Hagood v. Sonoma County Water Agency, 929 F.2d 1416, 1421 (9th Cir. 1991).

Further, "the weakest account of the Act's 'requisite intent' is the 'knowing presentation of what is known to be false' . . . .The phrase 'known to be false' in that sentence does not mean 'scientifically untrue'; it means 'a lie.'" Id. See also Hindo v. University of Health Sciences, 65 F.3d 608, 613 (7th Cir. 1995)(citing Hagood and Wang with approval and holding that innocent mistakes or negligence are not actionable under the FCA); United States v. Warning, No.Civ.A. 9106488, 1994 WL 105674, at *1 (E.D.Pa. July 26, 1994)(holding that negligence or innocent mistakes do not give rise to liability under FCA).

Therefore, even if Plaintiff had established that the information on any of the documents relating to Ms. Ellis on which he relies was false, and he has not, he cannot establish that they were knowingly so rendered by either Defendant.[10] Accordingly, summary judgment is granted in favor of the Defendants with regard to Plaintiff's claims under sections 3729 (a)(1) and (2) of the FCA.

Moreover, Plaintiff has not established a violation of section 3729 (a)(4). In order to establish a claim under section (a)(4), Plaintiff must prove: (1) the defendant had possession, custody, or control of money or property used or to be used by the government; (2) the defendant delivered or caused to be delivered less property than the amount for which he received a certificate or receipt; (3) with intent to defraud or to willfully conceal the property; and (4) the United States suffered damages as a result. Stinson, 721 F. Supp. at 1259. Again, the only evidence that Plaintiff has presented to this Court is his belief that the Medicare summary notices for Ms. Ellis are inconsistent with her medical records.

With regard to his claim that the Defendants had

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[10] Moreover, although Plaintiff asserts that Defendants committed similar fraudulent acts on more occasions, he admits that he does not possess records which support his claims with regard to those dates because there are no records. (Showell Dep. at 188.) Clearly this Court is precluded from making a finding of fraudulent records or claims in the complete absence of those records or claims asserted to be false.

possession, custody or control of government property or money, Plaintiff asserts only that the Defendants were paid money by Medicare in response to filing claims with regard to Ms. Ellis' treatment which were late or false. (Showell Dep. at 38-39.) However, as explained above, Plaintiff has failed to establish that any claims paid by Medicare for Ms. Ellis' treatment were late or false, and as such, he has not established that the Defendants wrongfully possessed government funds. Further, Plaintiff cannot establish that Defendants performed services for Ms. Ellis which were less than the amount for which they were paid by Medicare, as he admits that he does not know what services were actually performed on or what treatment was administered to Ms. Ellis. Id. at 21. Moreover, Plaintiff admits that he does not know how any of the claims were processed within J.F.K., other than his belief that Dr. Abdolliahian signed them, and does not know how J.F.K. generally processes or monitors its records or billing. Id. at 138-139, 107.

Finally, with regard to section (a)(4), Plaintiff also claims that Dr. Abdolliahian failed to collect a "20 percent co-insurance which they didn't collect from 1993 to 1997 and the deductibles from Frances Ellis." Id. at 104. Plaintiff claims that Dr. Abdolliahian should have collected those funds "as part of his fee." Id. However, Plaintiff admits that the government was never supposed to receive those alleged uncollected funds,

Id. at 105. As Defendants correctly point out, co-pays and deductibles are not property or money used or to be used by the government, and, in any event, Ms. Ellis was in possession of those funds, rather than Defendants. As such, this claim is inapplicable to 3929(a)(4). Accordingly, since Plaintiff has not shown that the Defendants had possession, custody or control of government property or money with the intent to defraud, or that the medical services which they delivered to Ms. Ellis were less than the amount for which they were paid by Medicare, summary judgment is granted in favor of Defendants with regard to this claim as well.[11]

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[11] With regard to his FCA claims, Plaintiff also appears to assert that J.F.K. filed a false claim by seeking payment for laboratory services provided by its on-premise lab. (Showell Dep. at 116-119.) Plaintiff claims that J.F.K. was not licensed under the Clinical Laboratory Improvement Amendments of 1988 ("CLIA"), 42 U.S.C. section 263a, to perform the tests, and that, therefore, the claim was false. However, Plaintiff admits that he does not know what is required for approval under CLIA. Id. at 118-119. Moreover, Plaintiff has produced no evidence to rebut J.F.K.'s five Certificates of Accreditation, issued by the College of American Pathologists, which have been provided by J.F.K. Therefore, he has not met his burden in establishing this false claim.

Moreover, Plaintiff alleges a FCA violation based upon a January 30, 1997 Medicare summary notice which indicated that certain non-covered charges required payment. However, Mr. Showell has no idea what the non-covered charges were, or what services were provided relating to them. (Showell Dep. at 157-158.) It is simply unclear why Plaintiff believes this notice is a false claim, other than the fact that the bill was subsequently resubmitted and the charges were approved for payment. However, Plaintiff has clearly failed to make out this claim, much less prevail on it.

B. 42 U.S.C. section 1320a 7b(b).

Plaintiff also alleges that Defendants violated 42 U.S.C. section 1320a-7b(b)(the "Anti-Kickback Statute,") in connection with Ms. Ellis' treatment with Dr. Abdolliahian at J.F.K. While Dr. Abdolliahian argues that the Anti-Kickback Statute is a criminal statute and therefore inapplicable to this action, J.F.K. correctly points out that cases have supported the proposition that a violation of the Anti-Kickback Statute may serve as a basis for a claim under the FCA. See United States ex rel. Thompson v. Columbia/HCA Healthcare Corp., 125 F.3d 899, 902 (5th Cir. 1998); United States ex rel. Pogue v. American Healthcorp, Inc., 914 F. Supp. 1507, 1509-1510 (M.D.Tenn. 1996). However, Plaintiff is nonetheless required to make out a prima facie claim under the FCA. Thompson, 125 F.3d at 902 (holding that violation of statute does not necessarily create a cause of action under the FCA, if claims themselves are not false or fraudulent under the FCA); Pogue, 914 F. Supp. at 1513 (holding where Plaintiff brought qui tam FCA claim for Defendants' violation of Anti-Kickback Statute that "the False Claims Act was not designed to punish every type of fraud committed upon the government . . . It was not intended to operate as a stalking horse for enforcement of every statute, rule or regulation. Therefore Pogue may bring his claim under the False Claims Act only if he can show that Defendants engaged in fraudulent conduct

with the purpose of inducing payment from the government.")

In the instant case, as explained above, Plaintiff has failed to establish any false or fraudulent claims or records made by either J.F.K. or Dr. Abdolliahian. Further, his only support for the Anti-Kickback claim is his assertion that the Defendants "caused to be made false or fictitious statements on Frances Ellis medical records and on false claims presented to Medicare for Frances Ellis," and that Defendants "failed or refused to disclose on Frances Ellis medical records material information in regards to Frances Ellis and on material information in regards to claims presented to Medicare for services rendered to Frances Ellis." Am. Compl. at ¶¶ 224, 225. As the allegations concerning the Anti-Kickback claim are mere repetitions of the arguments supporting Plaintiff's FCA claim, which has no merit, summary judgment is granted in favor of both Defendants on this claim as well. See United States ex rel. Becker v. U.S. Diagnostic Inc., No.Civ.A. 97-7807, 1999 WL 963032, at *2 (C.D.Cal. June 25, 1999)(holding that alternative claim under Ant-Kickback Statute in FCA case failed as factual allegations underlying the Anti-Kickback claim were identical to meritless FCA allegations.) Moreover, Plaintiff's allegations in support of this claim fail to assert the existence of any kick-backs received by either Defendant.[12]

[12] The section of the Anti-Kickback Statute under which Plaintiff brings this claim requires that the defendant knowingly

Accordingly, Plaintiff's Motion for Summary Judgment is denied, and the Motions for Summary Judgment filed by both Defendants are granted.

An appropriate Order follows.

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and willfully solicit or receive remuneration, such as a kickback, bribe or rebate. 42 U.S.C. § 1320A-7b(b).